

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GEORGE MARTIN,  
Plaintiff,

v.

W. MUNIZ, et al.,  
Defendants.

Case No. 17-01690 BLF (PR)

**ORDER GRANTING  
MOTION FOR  
SCREENING ORDER;  
DISMISSING AMENDED  
COMPLAINT WITH  
LEAVE TO AMEND;  
ADDRESSING PENDING  
MOTIONS**

(Docket Nos. 108, 109, 110,  
112, 115)

Plaintiff, a California inmate, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983, against prison officials at Salinas Valley State Prison (“SVSP”). The Court granted Defendants’ motion to dismiss the complaint for failing to comply with Rules 18 and 20 of the Federal Rules of Civil Procedure (“FRCP”), and granted Plaintiff leave to amend to attempt to correct the deficiencies. (Docket No. 98.) Plaintiff

1 filed an amended complaint. (Docket No. 107), and Defendants  
2 move for a screening order. (Docket No. 108.) The motion is  
3 **GRANTED.**

## 4 5 **DISCUSSION**

### 6 **A. Background**

7 In the order of service, the Court found the complaint stated  
8 a cognizable claim under the Eighth Amendment based on the  
9 allegation that Defendants acted with deliberate indifference to  
10 his pain management and neurological and orthopedic medical  
11 condition since 2007. (Docket No. 19 at 2.) In granting  
12 Defendants' motion to dismiss, the Court found that Plaintiff's  
13 action was based on two different and apparently unrelated  
14 medical issues: inadequate pain medication (for his spinal  
15 condition) and vision care needs. (Docket No. 98 at 6.) In filing  
16 an amended complaint, Plaintiff was advised that he was to limit  
17 the claims in this action to an Eighth Amendment deliberate  
18 indifference claim regarding either his pain management or his  
19 vision care needs. (*Id.* at 7.) In their motion for a screening  
20 order, Defendants assert that Plaintiff's amended complaint does  
21 not appear to follow the Court's directive because it includes  
22 allegations regarding both pain management medication and  
23 vision pain. (Docket No. 108 at 2.)

### 24 **B. Analysis**

25 Under the Federal Rules of Civil Procedure, a plaintiff may  
26 properly join as many claims as he has against an opposing party.  
27 Fed. R. Civ. P. 18(a). But parties may be joined as defendants in  
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one action only “if any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). Put simply, claims against different parties may be joined together in one complaint only if the claims have similar factual backgrounds and have common issues of law or fact. *Coughlin v. Rogers*, 130 F.3d 1348, 1350-51 (9th Cir. 1997).

The amended complaint does not adhere to Rule 18(a) because it includes a variety of unrelated claims against different Defendants: claims against Defendant Dr. Kumar for actions related to Plaintiff’s pain medication while housed at the STAF-Corcoran<sup>1</sup> during 2003, (Am. Compl. ¶¶ 15-16); the claim that after he was transferred to Salinas Valley State Prison (“SVSP”) he was issued the wrong blood pressure medicine in February 2007, (*id.* ¶17); the claim that Defendant Dr. Bright improperly denied his appeal in 2012 regarding his pain management, (*id.* ¶ 21); the claim that Defendant William Muniz improperly denied a chrono for single-cell accommodations, (*id.* ¶ 24); the claim that he was injured during an assault on August 1, 2013, which resulted in a guilty finding for assault that adversely affects his parole eligibility, (*id.* at 25); the claim that Defendant Dr. Eric Sullivan denied him treatment after the assault on August 1,

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<sup>1</sup> SATF-Corcoran refers to the Substance Abuse Treatment Facility and State Prison at Corcoran, California.

2013, (*id.* ¶ 26); the claim that Defendant Kumar failed to  
summon recommended neuro-surgeons to treat problems related  
to his spine, (*id.* ¶ 27); obstruction of justice against Defendants  
Muniz and Kumar on February 6, 2014, for providing  
information to the classification committee, (*id.* ¶ 29); the claim  
that on April 11, 2014, he was again placed on crush-float  
medicine by Defendants Posson, Kumar, and Dunlap, (*id.* ¶ 30);  
the claim that in June 2015, Defendant Birdsong refused to refer  
him to either a neurologist or orthopedic surgeon but instead sent  
him to a pain specialist, (*id.* ¶ 34); the claim that on January 22,  
2016, Defendants Kumar and Birdsong acted with deliberate  
indifference to his vision pain by sending him to Dr. Chudy who  
found no record of Plaintiff having any vision problems, (*id.* ¶  
36); the claim that Defendant Dr. Jennifer Villa acted with  
deliberate indifference to his pain by terminating the extended  
release to a lower crush-float medicine, (*id.* ¶ 38); the claim that  
Defendant Dr. Rasheed, ophthalmologist, acted with deliberate  
indifference by issuing a medical opinion that undermined  
previous surgeons orders, (*id.* ¶ 40); and the claim that on  
February 28, 2017, he was injured during transportation to the  
ophthalmologist office and that Defendant Kumar is liable, (*id.* ¶  
42).

Plaintiff asserts in a briefing in response to Defendants’  
motion for a screening order that he has eliminated the ADA  
vision and all other issues not related to his pain management.  
(Docket No. 109.) Even so, the amended complaint includes  
allegations that are not related to his pain management. For

1 example, Plaintiff claims that after he was transferred to SVSP,  
2 he was issued the wrong blood pressure medicine in 2007, which  
3 has no apparent relation to his pain management. Furthermore,  
4 Plaintiff includes allegations regarding an August 1, 2013  
5 incident which has a negative impact on his parole eligibility, but  
6 any claims related to this incident do not have a similar factual  
7 background and common issues of law or fact with the pain  
8 management claim. *See Coughlin*, 130 F.3d at 1350-51; Fed. R.  
9 Civ. P. 20(a)(2).

10 Plaintiff has already been permitted one opportunity to file  
11 an amended complaint in lieu of dismissal. In the interest of  
12 justice, Plaintiff shall be afforded one final opportunity to file a  
13 second amended complaint that satisfies both Rule 18(a) and  
14 Rule 20(a). As it appears that he desires to pursue the claim  
15 regarding his pain management, Plaintiff is instructed to limit the  
16 allegations in a second amended complaint to facts regarding his  
17 pain management and against only those Defendants that were  
18 personally involved in his pain management. If Plaintiff wishes  
19 to pursue other, unrelated claims, he must file them in a separate  
20 § 1983 action.

21 In preparing a second amended complaint, Plaintiff should  
22 also keep the following principles in mind. Liability may be  
23 imposed on an individual defendant under § 1983 only if Plaintiff  
24 can show that the defendant proximately caused the deprivation  
25 of a federally protected right. *See Leer v. Murphy*, 844 F.2d 628,  
26 634 (9th Cir. 1988); *Harris v. City of Roseburg*, 664 F.2d 1121,  
27 1125 (9th Cir. 1981). A person deprives another of a  
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1 constitutional right within the meaning of section 1983 if he does  
2 an affirmative act, participates in another's affirmative act or  
3 omits to perform an act which he is legally required to do, that  
4 causes the deprivation of which the plaintiff complains. *See*  
5 *Leer*, 844 F.2d at 633. Under no circumstances is there  
6 respondeat superior liability under section 1983. Or, in layman's  
7 terms, under no circumstances is there liability under section  
8 1983 solely because one is responsible for the actions or  
9 omissions of another. *See Taylor v. List*, 880 F.2d 1040, 1045  
10 (9th Cir. 1989).

### 11 **C. Pending Motions**

12 Plaintiff filed an "ex parte application" which requests a font  
13 size of 18 or 20 to accommodate his painful and blurry vision.  
14 (Docket No. 109.) The request is **GRANTED**. Henceforth all  
15 filings, including court orders and Defendants' papers, shall be  
16 prepared in at least a font size of 18.

17 Plaintiff has filed several requests for copies of his motions.  
18 (Docket Nos. 111, 118.) Notwithstanding his *pauper* status,  
19 Plaintiff is still responsible for the cost of copies. The Clerk of  
20 the Court shall include with this order a Request for Copies form  
21 showing the appropriate costs for the copies he requests.

22 Plaintiff has filed a motion for a contempt citation or  
23 sanctions, asserting that the "Office of the Attorney General  
24 Xavier Becerra has systematically condoned the nefarious  
25 practice of protecting/representing (CDCR); Salinas Valley State  
26 Prison, Wardens, and Chief Medical Executive, Doctors and their  
27 Subordinates Personnel[']s] malicious endeavors to harm and or  
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1 cause the intentional killing of a patient/plaintiff before the  
2 federal courts... to cover up and conceal criminal and medical  
3 malfeasance to render the need for corrective [] procedures  
4 moot.” (Docket No. 110 at 3-4.) Defendants filed an opposition.  
5 (Docket No. 113.)

6 The district court has the power to punish by fine or  
7 imprisonment, or both, at its discretion, such contempt of its  
8 authority based on “disobedience or resistance to its lawful writ,  
9 process, order, rule, decree, or command.” 18 U.S.C. § 401.  
10 Here, as Defendants point out, Plaintiff fails to point to any  
11 specific order of the court that Defendants violated. His  
12 allegations against the Office of the Attorney General are vague  
13 and conclusory and not supported by any evidence. Accordingly,  
14 the motion for a contempt citation is DENIED.

15 Plaintiff filed an ex-parte motion for “access to due  
16 process,” claiming that prison officials retaliated against him in  
17 mid-September 2018 for filing a motion for contempt citation and  
18 are obstructing his procedural due process rights. (Docket No.  
19 112.) It is unclear what action he desires from the Court. But to  
20 the extent that he is attempting to add another claim to this  
21 action, Defendants asserts in response that he may not do so since  
22 he clearly has not exhausted his administrative remedies for this  
23 new claim before he commenced this action in July 2017.  
24 (Docket No. 116 at 2.) Defendants are correct. Plaintiff must  
25 exhaust administrative remedies before he files suit. *See*  
26 *McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002); *see*  
27 *Vaden v. Summerhill*, 449 F.3d 1047, 1051 (9th Cir. 2006)

1 (where administrative remedies are not exhausted before the  
2 prisoner sends his complaint to the court it will be dismissed even  
3 if exhaustion is completed by the time the complaint is actually  
4 filed). Plaintiff prepared the motion on the same day the alleged  
5 retaliatory action took place, i.e., on September 16, 2018, and  
6 therefore, he clearly could not have exhausted this claim prior to  
7 filing this motion, much less this action. Accordingly, the motion  
8 is DENIED.

9 Plaintiff filed another motion for miscellaneous relief,  
10 requesting a copy of his motion for a contempt citation and  
11 attachments thereto. (Docket No. 115.) As stated above,  
12 Plaintiff must pay for the cost of copies of documents from the  
13 court. Accordingly, the Clerk of the Court shall include this  
14 request in the Request for Copies form discussed above. *See*  
15 *supra* at 6.

## 16 17 CONCLUSION

18 For the foregoing reasons,

19 1. Defendants' motion for a screening order is  
20 **GRANTED**. (Docket No. 108.) The amended complaint is  
21 **DISMISSED** with leave to amend. Plaintiff is directed to file a  
22 second amended complaint containing only allegations in support  
23 of his Eighth Amendment deliberate indifference claim regarding  
24 his pain management. The second amended complaint must  
25 comply with Rule 18(a) and Rule 20(a) as discussed above, or be  
26 subject to dismissal for violating those rules.

27 2. The second amended complaint must include the  
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caption and civil case number used in this order, Case No. C 17-01690 BLF (PR), and the words “SECOND AMENDED COMPLAINT” on the first page. Plaintiff shall file the second amended complaint **no later than twenty-eight (28) days** from the date this order is filed. If using the court form complaint, Plaintiff must answer all the questions on the form in order for the action to proceed.

The second amended complaint supersedes the original and the amended complaints, which will be treated thereafter as non-existent. *Ramirez v. Cty. Of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015). Consequently, claims not included in the second amended complaint are no longer claims and defendants not named in the second amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

**Failure to respond in accordance with this order by filing a second amended complaint will result in the dismissal of this action without prejudice and without further notice to Plaintiff.**

3. Plaintiff’s ex parte application for a larger font size, (Docket No. 109), is **GRANTED**.

**Defendants are advised that all future filings shall be prepared in at least a font size of 18.**

4. Plaintiff’s motion for a contempt citation, (Docket No. 110), is **DENIED**. Plaintiff’s requests for copies, (Docket Nos. 111, 115, 118), are **DENIED** to Plaintiff paying the related costs. Plaintiff’s motion alleging new claims, (Docket No. 112), is

**DENIED.**

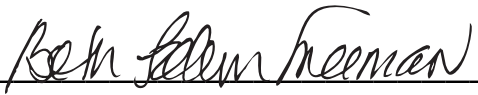
5. The Clerk shall include a Request for Copies form indicating the cost for copies of all the documents requested by Plaintiff.

6. The Clerk shall include two copies of the court's form complaint with a copy of this order to Plaintiff.

This order terminates Docket Nos. 108, 109, 110, 112, and 115.

**IT IS SO ORDERED.**

**Dated:** January 8, 2019

  
**BETH LABSON FREEMAN**  
United States District Judge